

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219415.2 **DATE:** September 23, 1985
MATTER OF: Shaw Food Services Company

DIGEST:

1. Contracting agency reasonably excluded proposal from the competitive range because of informational deficiencies when the proposal omitted prices specifically required by the solicitation, the proposal would have to be rewritten in order to correct the deficiencies, several offerors were in the competitive range, and protester's price was clearly higher than other offerors.
2. Protester has not proved its case when the only evidence on an issue of fact is conflicting statements of the agency and the protester.

Shaw Food Services Company (Shaw) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DABT10-85-R-0011 issued by the Department of the Army (Army), Fort Benning, Georgia, for dining facility operations, cooks and attendants.

We deny the protest.

Thirteen proposals were timely received in response to the RFP. The Army excluded Shaw's offer from the competitive range because, in addition to other deficiencies, its proposal offered prices for some services not required by the RFP and failed to give prices for many other services. Several offerors were left in the competitive range after Shaw's exclusion.

The RFP directed that proposals be submitted in the format and with the content specified by the solicitation, and stated that "Failure to do so may result in the proposal being eliminated from consideration for award." Proposals

033266

were required to "Include Sections A, B, and K of the solicitation, completed and executed." Instead of providing section B of the solicitation, which was the pricing schedule, Shaw submitted a computer printout of prices, one for the base year and one for all 4 option years. By not using the furnished pricing schedule, Shaw omitted prices for the reception station for all 5 years; omitted prices for building 75 for all 5 years; included prices for five buildings for 4 years eliminated by consolidation into a larger facility; omitted one building for 4 years; included five buildings for 3 years eliminated by consolidation, and omitted one building for 3 years. In addition, Shaw failed to submit the qualifications of its direct personnel, and information regarding the vehicles it proposed to utilize, accounting system and financial statements, all required by the RFP.

Shaw contends that these deficiencies were minor, and did not preclude the Army's evaluation of Shaw's offer for purposes of inclusion in the competitive range. According to Shaw, pricing for each building is based upon the number of people being served, the number of meals, and the number of days of service. Shaw believes that on the basis of these factors, the Army could have determined Shaw's price for any building within a reasonable range to determine whether Shaw's price proposal merited further consideration. Shaw argues that the Army could easily have excluded Shaw's prices for buildings erroneously included in its proposal, and must have realized that Shaw's price for buildings erroneously excluded would not have exceeded Shaw's price for other similar buildings which required more work and for which Shaw submitted prices.

The Army counters that any price estimate it developed for the omitted items would bear little resemblance to one constructed by Shaw, since each offeror has different estimation methodologies based on unique expertise and experience in the field, perceived competitive position, home office expense and management approach, and assessment of risk. The Army argues that Shaw's allegation that the Army could have excluded prices for buildings erroneously included in Shaw's proposal, and used prices included for similar buildings, is faulty because: (1) it overlooks the complexity of the pricing process, and (2) the reception station and building 75 are unique from a pricing standpoint. The reception station involves the only 24 hour operation, and building 75 is used intermittently for reserve unit training and has a unique workload. According to the Army, it would have had to reconstruct Shaw's pricing proposal from scratch in order to estimate Shaw's intended

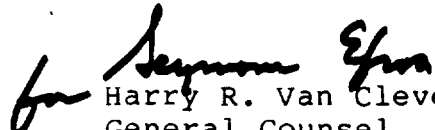
price. Direct costs would have to be determined for each dining facility; indirect costs would have to be developed and allocated to each dining facility, and the appropriate factors for profit and ceiling price applied. In addition, price escalation for certain salaries and material costs would have to be computed for option years. The Army contends that such an exercise would have been contrary to the purpose of the solicitation process, since it would have required the Army to determine the method by which Shaw prepared its price proposal and to substitute its expertise for that of the offeror.

We have held that a contracting agency, exercising reasonable discretion, may exclude a proposal from the competitive range when informational deficiencies are so material that upgrading the proposal to an acceptable level would require major revisions or the submission of an entirely new proposal. XYZTEK Corp., B-214704, Aug. 21, 1984, 84-2 C.P.D. ¶ 204. In determining whether omissions are material enough to warrant exclusion, our Office considers such factors as: the extent to which the solicitation calls for detailed information; the scope and range of the omissions; the number of other offerors in the competitive range; and the potential cost savings offered by the rejected proposal. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 C.P.D. ¶ 15; XYZTEK Corp., B-214704, supra, at 5.

Here, the RFP was very definite in requiring that proposals be submitted in the format and with the content specified by the solicitation. The RFP's requirement to include section B, the pricing schedule, was very specific. Offerors were warned that failure to submit it might cause rejection of their proposals. Further, as Shaw admits, the Army cannot directly compare Shaw's price offer with its technical proposal for the reception building or building 75. Indeed, based on our review, the price proposal would have to be rewritten to permit evaluation of Shaw's proposal. Several offerors remain in the competitive range. Also, although the price proposal cannot be evaluated, the record shows that Shaw's price proposal was clearly higher than those proposed by other offerors in the competitive range. Under the circumstances, we conclude that the Army reasonably eliminated Shaw from the competitive range. Harris Data Communications, Inc. v. United States, 2 Cl. Ct. 229 (1983), aff'd mem., 723 F.2d 69 (Fed. Cir. 1983).

Shaw also contends that it was not given the opportunity to amend its offer before being excluded from the competitive range, though the Army had specifically assured it would be given such an opportunity after Shaw and at least one other offeror complained of insufficient time to prepare offers. The Army denies this and states that Shaw was advised that proposal receipt would be extended, if sufficient offerors requested additional time. Since that did not occur, proposals were received as scheduled. Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting agency, the protester has not carried its burden of proving its case. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 C.P.D. ¶ 192.

The protest is denied.


for Harry R. Van Cleve
General Counsel